Lembaga Tatatertib Peguam-Peguam v Wan Mohd Nazri bin Wan Hassan

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W–02–1199 OF 2005
ZULKEFLI, MOKHTAR SIDIN AND HASHIM YUSOFF JJCA
27 JULY 2006

Legal Profession — Disciplinary proceedings — Disciplinary Committee — Inquiry into complaints — Whether Disciplinary Board can appoint a Disciplinary Committee without first appointing an Investigating Tribunal — Legal Profession Act 1976 ss 103A(a), 103B, 100(1), 102(2)

By way of originating summons filed on 13 September 2005, the plaintiff who is an advocate and solicitor sought several declarations and relief against the defendant, a Disciplinary Board constituted under the provision of s 93 of the Legal Profession Act 1976 ('the Act'). Both the plaintiff and the defendant agreed that there is only one main issue to be tried in this matter namely: Whether the defendant can proceed with a complaint made against the plaintiff, by appointing a Disciplinary Committee without first appointing an Investigating Tribunal to inquire into the complaint and submit a report, pursuant to the provisions of the Act. The contention of the plaintiff is that the defendant in by-passing the Investigating Tribunal and appointing a Disciplinary Committee has resulted in the defendant breaching the provisions of the Act and consequently rendered the proceedings commenced against the plaintiff to be void for procedural unfairness. The defendant's contention is that the Disciplinary Board has the power to constitute a Disciplinary Committee without first constituting an Investigating Tribunal. The defendant relies on s 103A(a) read together with s 103B of the Act in support of its contention.

Held, dismissing the appeal:

(1) The provisions of ss 103A and 103B in Part VII of the Act must be considered in the light of the preceding sections under the same Part VII of the Act relating to 'Disciplinary Proceedings'. It cannot be considered in isolation to circumvent the procedure and mechanism provided by the Act in dealing with complaints against advocates and solicitors. To do so will lead to arbitrariness which will be contrary to the spirit of the Act (see para 10).

(2) Section 100(1) of the Act provides the mechanism for investigating a complaint. The only discretion vested with Disciplinary Board at this stage is to decide whether there is merit or not in the complaint. If it considers that there is merit in the complaint, then it shall forthwith constitute an Investigating Tribunal (see para 11).

(3) Whether there should be a formal investigation or not as envisaged by s 103A(a) of the Act it must be subject to a report made by the Investigating Tribunal under s 102(2) of the Act. The fundamental principles of statutory interpretation is that a statute is to be read and interpreted as a whole and not in isolation. Sections 103A and 103B of the Act therefore cannot be read in isolation without considering the other preceding ss 102 and 103 in the same Part VII of the Act (see para 14).

(4) If the interpretation by the defendant on ss 103A and 103B is to be accepted, then it would render s 100 of the Act meaningless. The relevant words used in s 100 of the Act are that the Disciplinary Board 'shall forthwith' constitute an Investigating Tribunal if the Disciplinary Board considers a complaint has merit. There is nothing in s 100 of the Act to even suggest that the Disciplinary Board can 'forthwith' appoint a Disciplinary Committee to investigate a complaint in certain circumstances as contended by the defendant. If the legislature intended the Disciplinary Board to have the powers to 'forthwith' appoint a Disciplinary Committee and bypass the appointment of an Investigating Tribunal, then there would have been an express provision to this effect. The provisions would presumably also set out the criteria, nature and type of complaints in detail that would enable the Disciplinary Board to by-pass the Investigating Tribunal and go straight to a Disciplinary Committee. However, there is no such provision (see para 15).

(5) The only time when the Disciplinary Board may constitute a Disciplinary Committee without constituting an Investigating Tribunal is when an advocate and solicitor has been convicted of an offence of criminal breach of trust or any other offence involving fraud or dishonesty or the advocate and solicitor has been suspended under s 94(4) of the Act. In the present case the plaintiff has not been convicted of any criminal case nor has been suspended. Hence, it is incumbent upon the defendant to follow the procedures as laid down by the Act and not to unilaterally circumvent the statutory procedure provided for in the Act (see para 18).

[Bahasa Malaysia summary

Melalui satu saman pemula yang difailkan pada 13 September 2005, plaintif seorang peguamcara dan peguambela memohon pelbagai perisytiharan dan relif terhadap defendan, sebuah Lembaga Tatatertib yang ditubuhkan di bawah peruntukan s 93 Akta Profesyen Undang-Undang 1976 ('Akta tersebut'). Kedua-dua plaintif dan defendan bersetuju bahawa hanya terdapat satu isu utama untuk di dengar di dalam perkara ini, iaitu: Sama ada defendan boleh meneruskan dengan satu aduan terhadap plaintif, dengan melantik satu Jawatankuasa Tatatertib tanpa melantik satu Tribunal Siasatan dahulu untuk menyiasat aduan tersebut dan menyerahkan satu repot, menurut peruntukan Akta tersebut. Hujahan plaintif adalah bahawa defendan dengan melangkau Tribunal Siasatan dan melantik Jawatankuasa Tatatertib telah menyebabkan defendan melanggar peruntukan Akta tersebut dan dengan itu menyebabkan prosiding yang dimulakan terhadap plaintif terbatal atas sebab ketidakadilan prosedur. Hujahan defendan ialah Lembaga Tatatertib mempunyai kuasa untuk membentuk satu Jawatankuasa Tatatertib tanpa membentuk dahulu satu

A Tribunal Siasatan. Defendan bergantung pada s 103A(a) dibaca bersama s 103B Akta tersebut untuk menyokong hujahannya.

Diputuskan, menolak rayuan tersebut:

B (1) Peruntukan-peruntukan ss 103A dan 103B di Bahagian VII Akta tersebut harus dipertimbangkan berdasarkan seksyen-seksyen sebelumnya di bawah Bahagian VII yang sama Akta tersebut berkaitan dengan 'Prosiding Tatatertib'. Ia tidak patut dipertimbangkan secara berasingan untuk memintasi prosedur dan mekanisme yang dibekalkan di bawah Akta tersebut apabila menghadapi C aduan-aduan terhadap peguambela dan peguamcara. Berbuat demikian akan menyebabkan tindakan sembarangan yang bertentangan dengan semangat Akta tersebut (lihat perenggan 10).

(2) Seksyen 100(1) Akta tersebut menyediakan mekanisme untuk menyiasat sesuatu aduan. Pada tahap ini, Lembaga Tatatertib hanya mempunyai budi D bicara menentukan sama ada terdapat merit atau tidak di dalam aduan tersebut. Jika ia berpendapat terdapat merit di dalam aduan tersebut, ia harus dengan segeranya membentuk satu Tribunal Siasatan (lihat perenggan 11).

(3) Sama ada satu penyiasatan yang formal harus diadakan atau tidak seperti yang dibayangkan di bawah s 103A(a) Akta tersebut, ia mesti tertakluk kepada satu E repot yang dibuat oleh Tribunal Penyiasatan di bawah s 102(2) Akta tersebut. Prinsip asas tafsiran berkanun ialah bahawa sesuatu statut harus dibaca dan ditafsirkan secara keseluruhan dan bukannya berasingan. Seksyen-seksyen 103A dan 103B Akta tersebut dengan itu tidak boleh dibaca secara berasingan tanpa mempertimbangkan ss 102 dan 103 di Bahagian VII yang sama Akta F tersebut (lihat perenggan 14).

(4) Sekiranya tafsiran oleh defendan terhadap ss 103A dan 103B digunakan, maka ia akan menjadikan s 100 Akta tersebut tidak bermakna langsung. Perkataan-perkataan yang relevan yang digunakan di s 100 Akta tersebut ialah bahawa Lembaga Tatatertib 'shall forthwith' melantik satu Tribunal G Penyiasatan sekiranya Lembaga Tatatertib berpendapat bahawa aduan tersebut mempunyai merit. Tiada apa-apa di seksyen 100 Akta tersebut yang mencadangkan Lembaga Tatatertib boleh 'forthwith' melantik satu Tribunal Penyiasatan untuk menyiasat satu aduan dalam keadaan-keadaan yang dinyatakan oleh defendan. Jika badan perundangan ingin Lembaga Tatatertib H mempunyai kuasa 'forthwith' melantik satu Jawatankuasa Tatatertib dan memintasi pelantikan Tribunal Penyiasatan, maka akan terdapat peruntukan nyata berhubungan dengan ini. Peruntukan-peruntukan akan kemungkinan juga menyatakan kriteria, sifat dan jenis aduan-aduan secara terperinci yang dapat membenarkan Lembaga Tatatertib memintasi perlantikan Tribunal Penyiasatan dan terus ke Jawatankuasa Tatatertib. Akan tetapi tiada I peruntukan sedemikian (lihat perenggan 15).

(5) Lembaga Tatatertib hanya dapat membentuk Jawatankuasa Tatatertib tanpa membentuk satu Tribunal Penyiasatan ialah sekiranya peguambela dan peguamcara telah disabit dengan satu kesalahan pecah amanah atau sebarang kesalahan berkaitan dengan fraud atau ketidakjujuran atau peguambela dan

peguamcara telah digantung di bawah s 94(4) Akta tersebut. Dalam kes ini, plaintif tidak disabitkan dengan sebarang kes jenayah ataupun digantung. Dengan itu, defendan harus mengikuti prosedur-prosedur yang ditetapkan oleh Akta tersebut dan bukan di satu pihak memintasi prosedur berkanun yang ditetapkan oleh Akta tersebut (lihat perenggan 18).]

Notes

For cases on disciplinary proceedings, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1559–1560.

Cases referred to

Attorney-General v HRH Prince Ernest Augustus of Hanover [1957] 1 All ER 49 (refd)
Wilson v First Country Trust Ltd [2004] 1 AC 8161 (refd)

Legislation referred to

Legal Profession Act 1976 ss 93, 94(4), 95, 96, 97, 100(1), 102(2)(a), (b), 103A(a), (b), (c), 103B(1)
Legal Profession (Amendment) Act 1992

Appeal from: Originating Summons No R1–17–106 of 2005 (High Court, Kuala Lumpur)

Datuk N Chandran (Maidzuara Mohammed and Selena Chow with him) (Logan Sabapathy & Co) for the appellant.
Alex De Silva (De Silva) for the respondent.

Zulkefli JCA (delivering judgment of the court):

INTRODUCTION

[1] By way of originating summons filed on 13 September 2005, the plaintiff who is an advocate and solicitor sought several declarations and relief against the defendant, a Disciplinary Board constituted under the provision of s 93 of the Legal Profession Act 1976 ('the Act') inter alia as follows:

(i) A declaration that the defendant has wrongly appointed a Disciplinary Committee to hear a complaint against the plaintiff without first appointing and obtaining a report from an Investigating Tribunal;

(ii) A declaration that the disciplinary proceedings carried out by the Disciplinary Committee purportedly appointed by the defendant is in breach of the provisions of the Act.

(iii) A declaration that the disciplinary proceedings taken thus far against the plaintiff by the Disciplinary Committee appointed by the defendant is null and void; and

(iv) An injunction to stop all further disciplinary proceedings against the plaintiff by the Disciplinary Committee appointed by the defendant.

[2] The learned High Court Judge allowed the plaintiffs application and made the orders as prayed for by the plaintiff. The defendant now appeals against the whole decision of the learned trial Judge of the High Court.

FACTS OF THE CASE

[3] The relevant facts of the case giving rise to the plaintiffs action herein and the chronology of events may be summarized as follows:

(1) On 22 December 2004, a complaint was lodged against the plaintiff by one Wan Haslan bin Wan Hassan on behalf of TH-NSTC Sdn Bhd to the defendant.

(2) On 8 February 2005, the defendant sent a notice to the plaintiff, requesting the plaintiffs written explanation to the complaint within 14 days from the date of receipt of the said notice.

(3) On 8 March 2005, the plaintiff wrote to the defendant requesting for an extension of thirty (30) days from the date of his letter to respond to the complaint.

(4) On 25 March 2005, the defendant responded by way of a letter urging the plaintiff to forward his explanation as soon as possible, failing which, the complaint shall be considered by the defendant without the benefit of his explanation.

(5) Since the defendant did not receive any further letters whether by way of explanation or otherwise from the plaintiff, the defendant proceeded to consider the complaint at its meeting held on 16 April 2005, and decided to refer it to a Disciplinary Committee pursuant to s 103A(a) of the Act. The plaintiff was informed of this by the defendant by way of a letter dated 28 April 2005.

(6) By a letter dated 20 June 2005, the plaintiff was informed by the Disciplinary Committee that a hearing date had been fixed for 12 July 2005 to hear the complaint.

(7) By a letter dated 6 July 2005, the plaintiff through his solicitors Messrs De Silva, wrote to the Chairman of the Disciplinary Committee seeking clarifications as to why a Disciplinary Committee had been constituted to hear the complaint when no prior investigation had been conducted by any Investigating Tribunal pursuant to the Act. In the same letter, the plaintiffs solicitor also sought for an adjournment of the hearing scheduled on 12 July 2005, giving the reason that the plaintiff would be overseas at that time.

(8) The Chairman of the Disciplinary Committee responded to the plaintiffs solicitors in a letter dated 6 July 2005, informing that the preliminary objection can only be heard at the hearing presided by the Disciplinary Committee itself. The plaintiff was further informed that a decision to adjourn the hearing could only be made collectively by the Disciplinary Committee itself.

(9) The hearing before the Disciplinary Committee on 12 July 2005 was adjourned to 27 July 2005. When the Disciplinary Committee sat on 27 July 2005 the plaintiff was absent. The plaintiff was not well and had seen a doctor who certified that he was unwell. Plaintiffs counsel then requested for an adjournment and tendered the medical certificate in support of the request at the hearing on 27 July 2005.

(10) The Disciplinary Committee rejected the plaintiffs request for an adjournment and proceeded with hearing the complaint. Evidence was recorded from one YM Raja Azahatuluyun bte Raja Jaafar on behalf of the complaint. Thereafter, the Disciplinary Committee fixed 16 September 2005 to continue the hearing of the complaint. The hearing before the Disciplinary Committee was further adjourned in view of the said Originating Summons filed and heard before the trial judge.

ISSUE TO BE TRIED

[4] Before the learned trial judge and again before us in this appeal, learned counsel for both the plaintiff and the defendant agreed that there is only one main issue to be tried in this matter namely:

> Whether the defendant can proceed with a complaint made against the plaintiff, by appointing a Disciplinary Committee without first appointing an Investigating Tribunal to inquire into the complaint and submit a report, pursuant to the provisions of the Act.

CONTENTION ON THE PARTIES

[5] It is not disputed that the defendant had not at any time constituted an Investigating Tribunal to inquire into the complaint and submit a report to the defendant for its consideration. It is therefore the contention of the plaintiff that the defendant in by- passing the Investigating Tribunal and appointing a Disciplinary Committee has resulted in the defendant breaching the provisions of the Act and consequently rendered the proceedings commenced against the plaintiff to be void for procedural unfairness.

[6] On the other hand, it is the contention of the defendant that the Disciplinary Board has the power to constitute a Disciplinary Committee without first constituting an Investigating Tribunal. The defendant relies on s 103A(a) read together with s 103B of the Act in support of its contention.

DECISION OF THE COURT ON APPEAL

[7] Learned counsel for the defendant submitted that in certain circumstances, the defendant may appoint a Disciplinary Committee without the need of going through the mechanism of appointing an Investigating Tribunal. He referred to s 103A(a) read together with s 103B of the Act. For easy reference the provisions of ss 103A and 103B of the Act are reproduced in full as follows:

A 103A. Where —

(a) the Disciplinary Board determines that there should be a formal investigation; or

(b) an advocate and solicitor has been convicted of an offence of criminal breach of trust under section 409 of the Penal Code or any other offence involving fraud or dishonesty; or

B (c) the advocate and solicitor has been suspended under section 94(4) of this part;

the Disciplinary Board shall forthwith appoint a Disciplinary Committee which shall hear and investigate the matter.

103B. (1) The Disciplinary Board shall appoint a Disciplinary Committee to consider, in cases where an Investigating Tribunal has been appointed, the report of the Investigating C Tribunal, or to investigate and make recommendations to the Disciplinary Board in respect of cases under section 103A.

(2) A Disciplinary Committee shall consist of (three) members of whom shall be —

(a) (two) advocates and solicitors; and

D (b) (one) layperson,

appointed from the Disciplinary Committee Panel

(3) The Disciplinary Board shall appoint a member from paragraph (a) of the subsection (2) to be the Chairman of the Disciplinary Committee.

E

[8] In his argument before us, learned counsel for the defendant submitted that we should look into the objective behind the enacting of the Legal Profession (Amendment) Act 1992 (Act 812/92) by the legislature which brought about the new amended provisions ss 103A and 103B of the Act. It is the defendant's position that these amended provisions give the defendant separate jurisdiction to forthwith F appoint a Disciplinary Committee in the circumstances as set out in s 103A(a), (b) or (c) of the Act. For the defendant, it was submitted that in cases where an interpretation of a particular amended statutory provision is required, the explanatory statement of the bill could be referred as an aid to statutory interpretation. See the case of *Wilson v First Country Trust Ltd* [2004] 1 AC 8161. G In this regard from a reading of the explanatory statement to s 103A of the Legal Profession (Amendment) Bill 1992 dated 19 December 1991, the following is noted:

> Section 103A provides for the situation where the Disciplinary Board determines that a formal investigation has to be made in respect of the complaint against the advocate and solicitor. In such a case a Disciplinary Committee shall be appointed under section 103B.

H

Learned counsel for the defendant contended that a reading of the explanatory statement to s 103A of the Legal Profession (Amendment) Bill shows that s 103A of the Act is to be read together with s 103B of the Act. It was submitted for the defendant that ss 103A and 103B of the Act need not be considered together with the preceding sections under Part VII of the Act in arriving at the proper I interpretation of the said two sections.

[9] It was further submitted for the defendant that s 102(2)(a) and (b) of the Act already provides for instances where the Disciplinary Board may constitute a Disciplinary Committee, either upon the recommendation of the Investigating

Tribunal or if the Investigating Tribunal finds that a formal investigation is not necessary, the Disciplinary Board may disagree and appoint a Disciplinary Committee to investigate. The defendant contended that the first limb of s 103B(1) of the Act clearly caters for instances arising under s 102(2)(a) and (b) of the Act and that the second limb of s 103B(1) of the Act must cater for a different scenario which is that the Disciplinary Board is separately empowered to forthwith appoint a Disciplinary Committee in situations stated in s 103A(a), (b) or (c) of the Act. Otherwise, the defendant contended this would result in duplicity in the interpretation of s 102(2)(a) and (b) of the Act of the one part, and s 103A read with s 103B of the Act of the other part.

[10] With respect, I do not think all the arguments put forward for the defendant's case are tenable in the circumstances of this case. I am of the view the provisions of ss 103 A and 103B in Part VII of the Act must be considered in the light of the preceding sections under the same Part VII of the Act relating to 'Disciplinary Proceedings'. It cannot be considered in isolation to circumvent the procedure and mechanism provided by the Act in dealing with complaints against advocates and solicitors. To do so will lead to arbitrariness which will be contrary to the spirit of the Act.

[11] Looking at the scheme of the Act, disciplinary proceedings against an advocate and solicitor is governed by Part VII under the heading 'Disciplinary Proceedings'. Section 93 provides for the establishment of the Disciplinary Board and its corporation. Sections 95, 96 and 97 provide the procedure for the appointment of a Disciplinary Committee and an Investigating Tribunal. Section 99 provides how a complaint is to be made to the Disciplinary Board. Section 100(1) provides the mechanism for investigating a complaint which expressly provides as follows:

> (1) Where a written application or complaint is referred to the Disciplinary Board, the Disciplinary Board shall, (if it considers that there is merit in the application or complaint), forthwith constitute an Investigating Tribunal.

Clearly from the above, the only discretion vested with Disciplinary Board at this stage is to decide whether there is merit or not in the complaint. If it considers that there is merit in the complaint, then it shall forthwith constitute an Investigating Tribunal.

[12] Section 101 of the Act provides the manner in which an Investigating Tribunal may investigate the complaint. Section 102 then contain provisions relating to the finding of the Investigating Tribunal and of the recommendations that the Investigating Tribunal may make in its report to the Disciplinary Board. The section provides that an Investigating Tribunal may recommend that a formal investigation is required or that it is not required. In the event the Investigating Tribunal recommends a formal investigation, then the Disciplinary Board shall constitute a Disciplinary Committee. Even where the Investigating Tribunal recommends that a formal investigation is not necessary, the Disciplinary Board may disagree and still appoint a Disciplinary Committee.

[13] It can be seen that, only when the Disciplinary Board has received a report from an Investigating Tribunal and the Disciplinary Board determines there ought to be a formal investigation that a Disciplinary Committee is appointed to investigate the complaint. The prerequisite is that there must be a report from the Investigating Tribunal first and a decision by the Disciplinary Board that a formal investigation is required.

[14] It is my view that the defendant's contention calls for a strained interpretation of the provisions of s 103A and s 103B of the Act as such a contention does not take into account the provisions of the preceding ss 100, 102 and 103 of the Act. It is to be noted that s 103A(a) of the Act provides as follows:

> Where the Disciplinary Board determines that there should be *a formal investigation,* the Disciplinary Board shall forthwith appoint a Disciplinary Committee which shall hear and investigate the matter. (Emphasis added.)

The phrase 'a formal investigation' found in the said s 103A(a) has appeared earlier in ss 102 and 103 of the Act. If the defendant's contention is to be accepted, then one has to ignore this fact. It is my view whether there should be a formal investigation or not as envisaged by s 103A(a) of the Act it must be subject to a report made by the Investigating Tribunal under s 102(2) of the Act. The fundamental principles of statutory interpretation is that a statute is to be read and interpreted as a whole and not in isolation. Sections 103A and 103B of the Act therefore cannot be read in isolation without considering the other preceding ss 102 and 103 in the same Part VII of the Act. On this point I would like to refer to the case of *Attorney-General v HRH Prince Ernest Augustus of Hanover* [1957] 1 All ER 49, HL wherein Viscount Simonds in delivering his speech, inter alia, at p 55 had this to say:

> It means only that the elementary rule must be observed that no one should profess to understand any part of a statute or of any other document before he has read the whole of it. Until he has done so, he is not entitled to say that it, or any part of it, is clear and unambiguous.

[15] It is also my finding that if the interpretation by the defendant on ss 103A and 103B is to be accepted, then it would render s 100 of the Act meaningless. The relevant words used in s 100 of the Act are that the Disciplinary Board 'shall forthwith' constitute an Investigating Tribunal if the Disciplinary Board considers a complaint has merit. There is nothing in s 100 of the Act to even suggest that the Disciplinary Board can 'forthwith' appoint a Disciplinary Committee to investigate a complaint in certain circumstances as contended by the defendant. If the legislature intended the Disciplinary Board to have the powers to 'forthwith' appoint a Disciplinary Committee and by-pass the appointment of an Investigating Tribunal, then there would have been an express provision to this effect. The provisions would presumably also set out the criteria, nature and type of complaints in detail that would enable the Disciplinary Board to by-pass the Investigating Tribunal and go straight to a Disciplinary Committee. However, there is no such provision. The construction that the defendant is propounding requires the Court to insert words into the Act for the said construction to apply. To my mind this would go clearly against all principles of statutory interpretation.

[16] With regard to the defendant's contention that the explanatory statement of the Legal Profession (Amendment) Bill 1992 be referred to as an aid to statutory interpretation of ss 103A and 103B of the Act, it is my finding that it does not necessarily show that it gives the defendant a separate jurisdiction to appoint a Disciplinary Committee without appointing an Investigating Tribunal in certain circumstances as set out in s 103A(a) of the Act. Equally, it can also be interpreted to mean that in the circumstances as set out in s 103A(a) of the Act the provisions in respect of the appointment and function of an Investigating Tribunal mentioned in the earlier preceding ss 100 and 102 of the Act would have to be considered in its application.

[17] I am in agreement with the view and finding of the learned trial judge when he stated that by the defendant herein by-passing the Investigating Tribunal and appointing a Disciplinary Committee, the defendant has unilaterally removed one of the tiers provided for by Parliament in the Act for investigating a complaint. In my view the defendant cannot unilaterally do this and ignore the clear and express provisions of the Act.

[18] The learned trial judge was also right when he stated that looking at the scheme of the Act, the only time when the Disciplinary Board may constitute a Disciplinary Committee without constituting an Investigating Tribunal is when an advocate and solicitor has been convicted of an offence of criminal breach of trust or any other offence involving fraud or dishonesty or the advocate and solicitor has been suspended under s 94(4) of the Act. In the present case the plaintiff has not been convicted of any criminal case nor has been suspended. Hence, it is incumbent upon the defendant to follow the procedures as laid down by the Act and not to unilaterally circumvent the statutory procedure provided for in the Act.

CONCLUSION

[19] For the reasons above stated, I would dismiss the defendant's appeal with costs and order that the deposit be paid to the plaintiff on account of taxed costs.

[20] My learned brothers, Mokhtar Sidin and Hashim Yusoff JJCA, have seen this judgment in draft and they have expressed their agreement with it.

Appeal dismissed.

Reported by Sally Kee